

MANDATE

S.D.N.Y.-N.Y.C.
03-cv-7586
Owen, J.

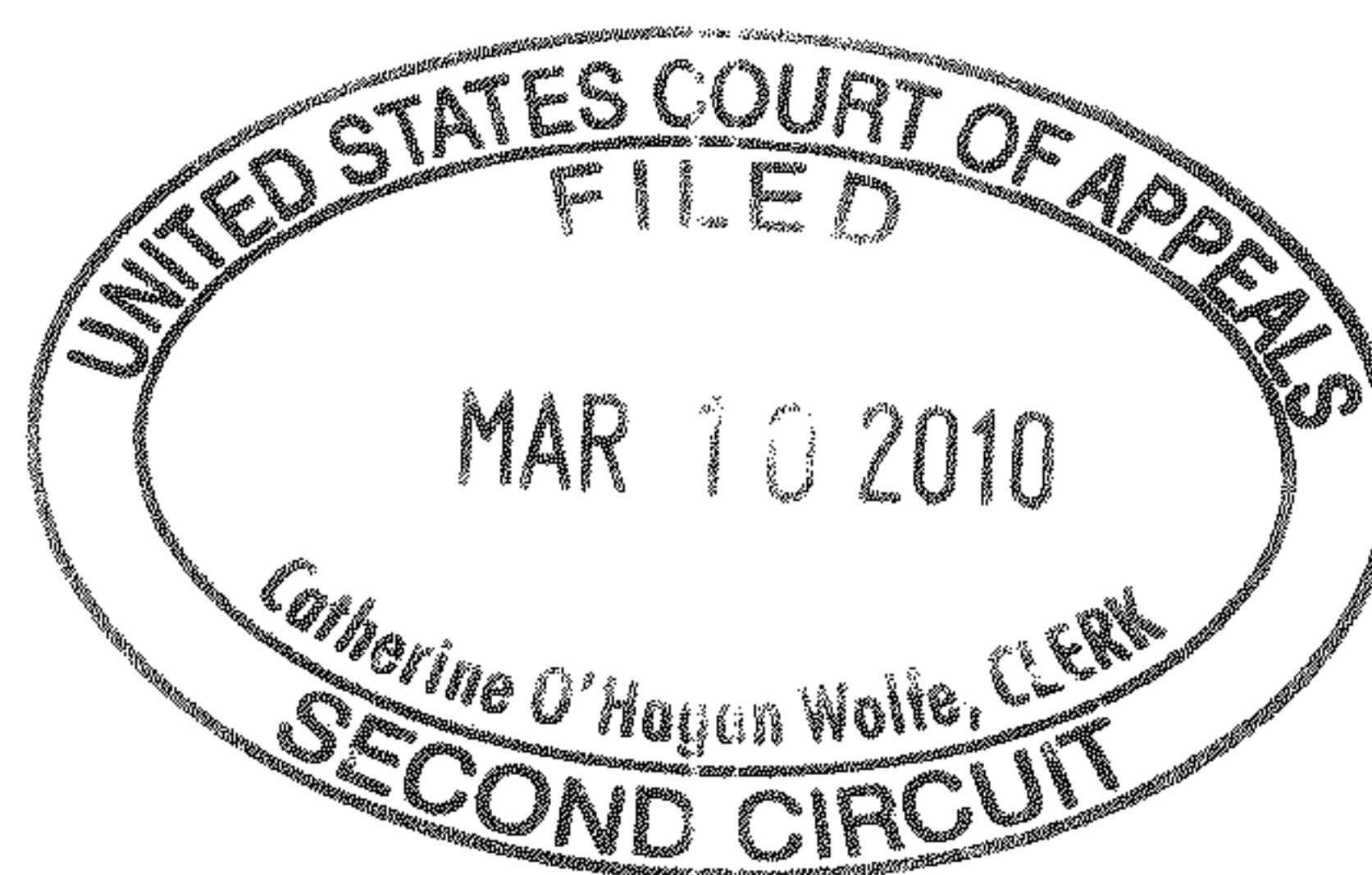
United States Court of Appeals
FOR THE
SECOND CIRCUIT

USDC SDNY
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DATE FILED: 05/05/2010

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 10th day of March, two thousand ten,

Present:

Joseph M. McLaughlin,
Circuit Judge,
Kimba M. Wood,*
*District Judge.***



Roy C. Hammond, doing business as Alaga Records,

Plaintiff-Counter-Defendant-Appellant,

v.

08-0793-cv

Tufamerica, Inc., doing business as Tuff City,

Defendant-Counter-Claimant-Appellee.

Appellee, through counsel, moves to dismiss the appeal, and for sanctions pursuant to Federal Rule of Appellate Procedure 38. Upon due consideration, it is hereby ORDERED that Appellee's motion

* Kimba M. Wood, of the United States District Court for the Southern District of New York, sitting by designation.

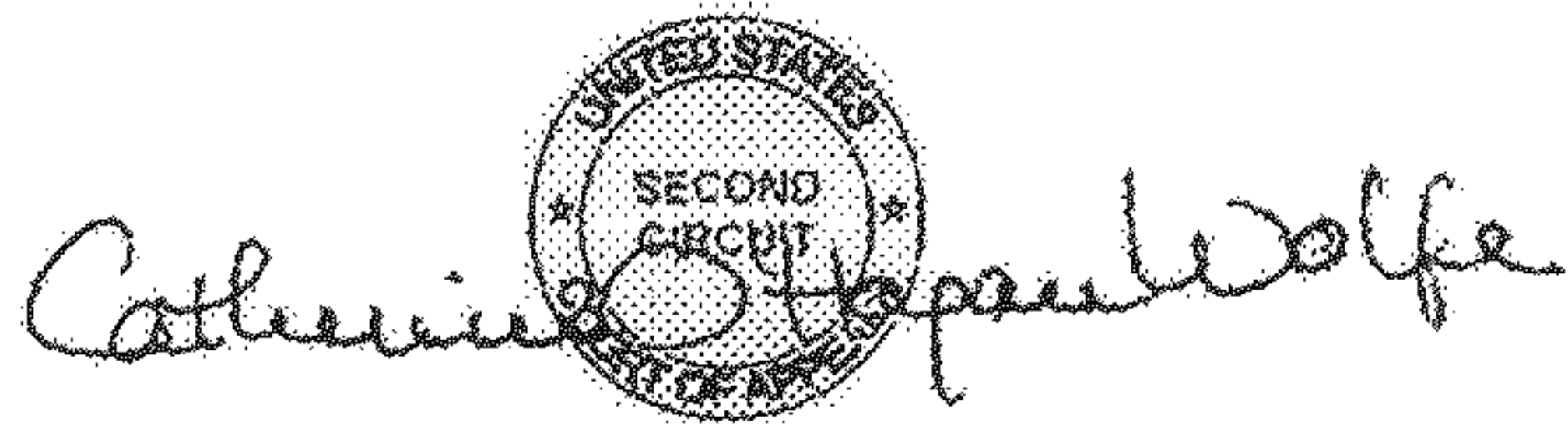
** The Honorable Rosemary S. Pooler, originally a member of the panel, did not participate in consideration of this appeal. The two remaining members of the panel, who are in agreement, have determined the matter. *See* 28 U.S.C. § 46(d); 2d Cir. Internal Operating Procedure E; *United States v. Desimone*, 140 F.3d 457 (2d Cir. 1998).

MANDATE ISSUED ON 5/4/10

to dismiss is GRANTED, but the motion for sanctions is DENIED. This Court lacks jurisdiction over any challenge to the district court's November 2007 judgment because appellant did not timely file his notice of appeal. *See* Fed. R. App. P. 4(a)(1)(A). Furthermore, Appellant's challenge to the district court's December 2007 order, denying his motion for reconsideration or a new trial, is without merit because the district court did not abuse its discretion in denying that motion. *See Mastrovincenzo v. City of New York*, 435 F.3d 78, 88 (2d Cir. 2006). However, the circumstances do not warrant the imposition of sanctions. *See In re 60 East 80th Street Equities, Inc.*, 218 F.3d 109, 118-19 (2d Cir. 2000).

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk

Catherine O'Hagan Wolfe

A True Copy

Catherine O'Hagan Wolfe, Clerk

United States Court of Appeals, Second Circuit

Catherine O'Hagan Wolfe